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C O N F I D E N T I A L SECTION 01 OF 02 MADRID 003104

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E.O. 12958: DECL: 12/27/2016  
TAGS: [PGOV](#) [PREL](#) [PTER](#) [SP](#)  
SUBJECT: SPAIN/CIA FLIGHTS: PLAINTIFFS DEMAND 13 USG  
OFFICIALS BE NAMED AS SUSPECTS

REF: A. MADRID 02657  
[1](#)B. MADRID 02374  
[1](#)C. MADRID 01799

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Classified By: DCM Hugo Llorens; reason 1.4 (D)

[1](#)1. (U) The Mallorcan "Free Association of Attorneys" and a group of Mallorcan professionals filed a motion calling upon National Court Judge Ismael Moreno to name 13 presumed USG officials as suspects in connection with the transit of a CIA flight that stopped in Palma de Mallorca in January 2004. The attorney's association and the Mallorcan professionals are the plaintiffs in a suit alleging torture, kidnapping, and illegal detention on the part of the CIA (Refs A, B, and C). (NOTE: Under Spanish law, an association of individuals can file charges against a defendant in a criminal case even if they were not directly affected by the actions of the defendant. For example, the "Association of Victims of Terrorism" has routinely used this mechanism to press charges against figures connected to ETA terrorist acts. END NOTE).

[1](#)2. (U) The plaintiffs drew the names from a report prepared by Spain's Civil Guard in 2005 regarding the occupants of a Boeing 737 with tail number N313P. The Civil Guard investigation was requested by the local court in Mallorca where the plaintiffs originally filed their case. The plaintiffs claim that this particular aircraft participated in the extraordinary rendition of German national Khaled el Masri in Macedonia after departing from Spanish territory. The names of the alleged occupants include:

- James Fairing
- Jason Franklin
- Michael Grady
- Lyle Edgard Lumsden III
- Eric Fair
- Bryam Charles
- Kirk James Bird
- Walter Richard Gressbore
- Patricia Rilroy
- Jane Payne
- James O'Hale
- John Decker
- Hector Lorenzo

[1](#)3. (U) Press reports indicate that at least five of the persons named in the suit held U.S. diplomatic passports. In order for the plaintiff's demand to proceed, it must be supported by National Court Prosecutor Vicente Gonzalez Mota and approved by Judge Moreno. Gonzalez has not yet indicated whether he will support the plaintiff's request. He and Judge Moreno previously denied plaintiff's demands that the

National Court request a report on the CIA flights from the U.S. Embassy in Madrid or other USG authorities. However, Judge Moreno has already entered into evidence the October 9 testimony of Khaled el Masri as well as telephone logs from the Gran Melia Victoria hotel and the Marriot Son Antem in Palma de Mallorca where the crew of the aircraft in question stayed during their stopovers in Mallorca. (NOTE: el Masri testified before the National Court that he was kidnapped and tortured by the CIA for five months in 2004, but acknowledged that could not identify the individuals who transported him from Macedonia to Afghanistan, nor could he demonstrate that the aircraft that transported him was the same the same aircraft identified in the Mallorca suit. END NOTE). The National Court has also requested the testimony of prosecutors from Milan and Munich regarding the kidnapping of el Masri in Macedonia and Egyptian national Abu Omar in Italy.

//COMMENT//

14. (C) It is possible that this case could eventually result in an official request to the USG by the National Court for information related to this aircraft and the personnel on the aircraft. While the Spanish Government has maintained that no crimes were committed in Spanish territory, the Spanish courts, including Judge Moreno, have asserted universal jurisdiction in cases involving torture, including in third countries. The National Court Prosecutor in this case, Vicente Gonzalez, is well known to us as Spain's liaison to the Embassy for the work of the Bilateral Counter Terrorism Experts Working Group. We find him to be an engaging and helpful colleague and anticipate that he will be sensitive to the Spanish Government's preference that this case not proceed. However, we have already seen in similar cases that Spanish judges fiercely guard their independence and are willing to break new ground on issues of jurisdiction. If Judge Moreno were to determine that there was sufficient

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evidence that a crime had been committed and that perpetrators could be identified, he would forward the case to a panel of trial judges. We will continue to track and report on developments in this case.  
AGUIRRE